

2020

BIENNIAL REPORT

VIRGINIA

MOTOR VEHICLE DEALER BOARD



Mission Statement

The Motor Vehicle Dealer Board will administer sections of the Commonwealth's Motor Vehicle Dealer Laws and Regulations as charged; promote the best interests of both the automotive consumer and dealer community; while providing a high level of customer service.

Chairman
Richard D. Holcomb
Commissioner
Department of Motor Vehicles

Executive Director
William R. Childress
Executive Director
Motor Vehicle Dealer Board



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November 1, 2020

The Honorable Ralph Northam
Virginia General Assembly
State Capitol
Richmond, Virginia 23219

Dear Governor Northam and Virginia General Assembly:

I am pleased to provide to you the Motor Vehicle Dealer Board's Biennial Report as required by Virginia Code §46.2-1503.5. I have prepared this report on behalf of the Motor Vehicle Dealer Board (Board).

Since the Board's inception in 1995, our primary focus and leading challenge has been educating the dealer community regarding the laws and regulations governing their industry. The approach of the Board and its staff is to educate dealers so that they will have the necessary knowledge and tools to further the professionalism of the automobile, motorcycle, trailer, and recreational vehicles dealer industry. In addition, the Board has taken a pro-consumer stand in its administration of the Transaction Recovery Fund; enforcement of Advertising Regulations and by assisting consumers when they are having a dealer related problem.

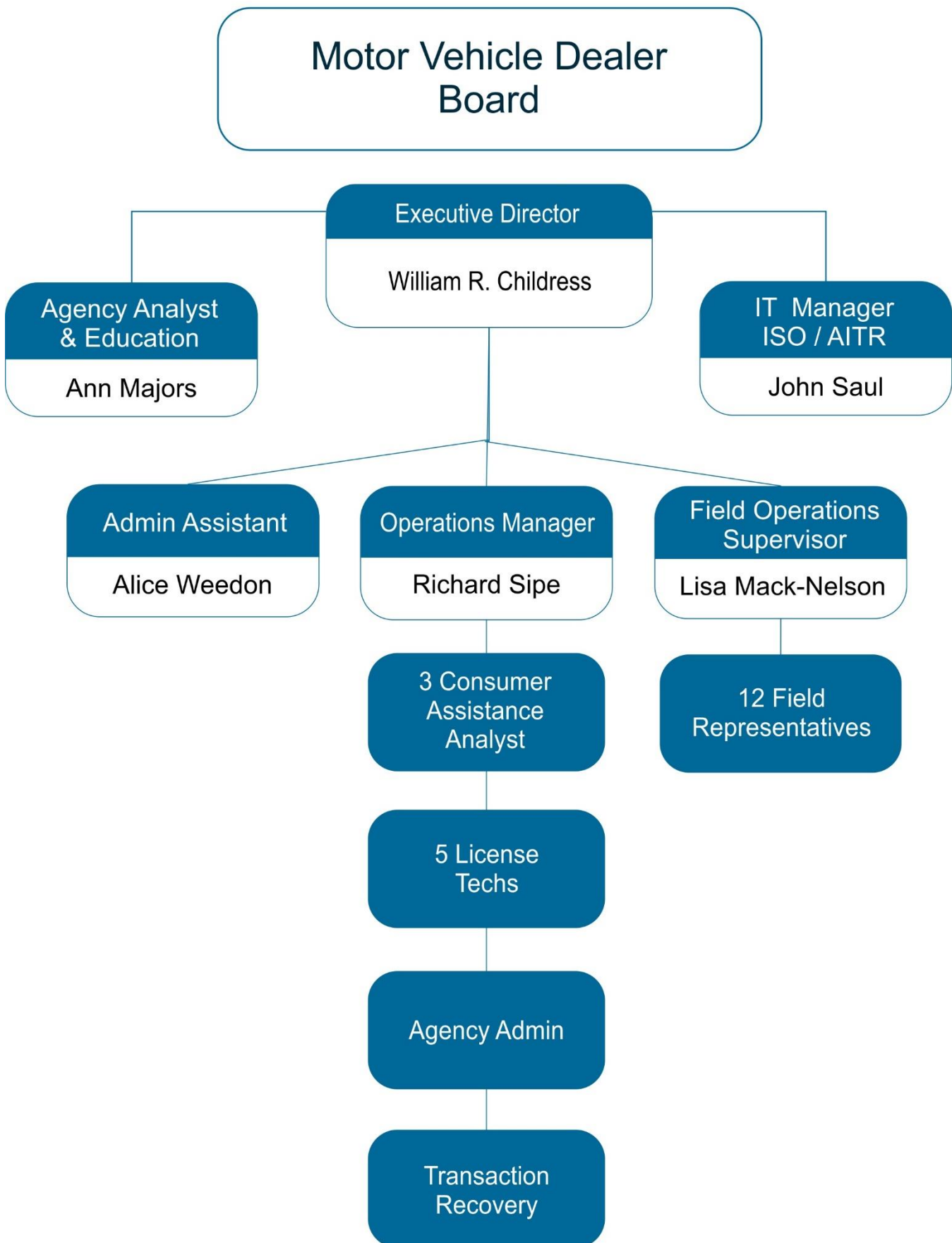
After reading this report, it is my hope that you will continue to agree that the Board continues to make a positive impact upon the dealer community, and the economy, and within the Commonwealth. Our methods of operation are completely transparent and continuously evolving as we strive to better serve the citizens and communities within our great Commonwealth. We thank you for your support as we continue our efforts to minimize regulations, increase efficiency, and enhance consumer protection.

Sincerely,

William R. Childress
Executive Director

cc: Secretary Shannon Valentine
Members of the Motor Vehicle Dealer Board

MVDB Organizational Chart



INTRODUCTION

The 1995 General Assembly overwhelmingly adopted legislation to shift the regulation and oversight of the new and used motor vehicle dealer industry from the Department of Motor Vehicles (DMV), to a professional board as described below. In 2015 the General Assembly adopted legislation that moved the oversight and regulation of motorcycle, trailer and recreational dealers from the DMV to the same board.

The Board consists of nineteen members for which the Governor, subject to confirmation by the General Assembly, appoints eighteen. In order to stagger appointments and ensure continuity, initially, eight members were appointed to two-year terms and nine were appointed to four-year terms.

The statute creating the Board stipulates that ten members shall be licensed franchise (“new”) motor vehicle dealers, and seven members shall be independent (“used”) dealers. Further, the statute requires that of the seven independent dealers, one shall be primarily engaged in trailer, recreational vehicle or rental vehicle business, and one shall be a licensed independent motorcycle dealer. The last members include an individual who has no direct or indirect interest, other than as a consumer, and the Commissioner of the DMV, who serves as the Board’s chair.

Members of the Board represent all areas of the Commonwealth. In addition, they represent all levels of ownership. Board members include those that own several dealerships to those with small operations and just a few employees. This cross section ensures that all perspectives of the industry have a voice on the Board.

The primary focus of the Board, as mandated by Virginia statute (Chapter 15 of Title 46.2), is to regulate new and used car, motorcycle, trailer and recreational vehicle dealers. This includes certifying and licensing dealers and salespersons. Additionally, the Board administers the Motor Vehicle Transaction Recovery Fund (MVTRF), handles consumer complaints regarding the dealers mentioned, monitors dealer advertising, and conducts administrative hearings.

Organizationally, the Board’s staff is divided into two functional areas: Field Operations and Headquarters Operations. The field operations consist of a supervisor, based out of Richmond, and field representatives who work out of their “home-offices” located throughout the Commonwealth. Inspecting dealerships, educating dealers, salespersons and consumers is the primary focus of the field representatives. Enforcement becomes necessary only after continued, blatant disregard for motor vehicle laws.

The number one priority of the Board Headquarters Operations staff is to review and ensure all applications meet all motor vehicle statutory requirements and local zoning ordinances before processing any initial or renewal applications for our licensees (dealers and salespersons). This work constitutes the highest volume and work effort for the Headquarters staff. As part of the licensing process, the Board also issues and renews dealer license plates and decals as authorized by DMV.

Lastly, the Board is self-sufficient and funded strictly by fees paid by the licensed dealers. These fees cover all of the expenses of the Board. No general fund dollars are appropriated to the Board.

COMMITTEES

Five statutorily mandated committees act as an extension of the Board: Advertising, Licensing, Franchise Law, Transaction Recovery Fund and Dealer Practices.

These committees meet on the second Monday of every other month in Room 702 at the Department of Motor Vehicles Headquarters building, 2300 West Broad Street, Richmond, Virginia.¹ The full Board meeting follows the completion of the last committee meeting on the same day.

The May 10, 2010 Motor Vehicle Dealer Board meeting was the first Commonwealth of Virginia Board or Commission meeting to be broadcast live over the web. All bi-monthly meetings are broadcast live and available to the public to view until the next meeting. All Board meetings are listed with the Virginia Town Hall and on the Board website, www.mvdb.virginia.gov.

Below you will find the statutorily required committees and their responsibilities:

ADVERTISING COMMITTEE

David Duncan, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on matters related to motor vehicle dealer advertising. The committee is to receive and identify advertising issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review staff reports on advertising complaints and violations. Present a summary report to the Board.
- Review, and then make recommendations to the Board on individual advertising actions proposed by the Executive Director that are required to come before the Board.
- Direct the advertising staff on how they monitor and identify advertising violations and consumer complaints concerning advertising.

¹ The last two meetings of FY20 were conducted virtually in response to the COVID-19 pandemic.

FRANCHISE REVIEW AND ADVISORY COMMITTEE

Gardner Britt, *Chairperson*

Committee Functions

- Advise the DMV Commissioner, through the Board, of any violations of Article 7 (Franchises) of the Motor Vehicle Dealer Act. (See § 46.2-1573.C.)
- Assist the Commissioner in assembling panels, made up of three Board members, as described in § 46.2-1573.D.8.
- Meets on an “as needed” basis and not every other month as the other committees.

LICENSING COMMITTEE

Maurice Slaughter, *Vice - Chairperson*

Committee Functions

- To advise the Board and the Board staff on matters related to the licensing of dealers, dealer-operators and salespersons. The committee is to receive and identify dealer licensing issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.
- Review, and then make recommendations to the Board on individual licensing actions proposed by the Executive Director or others who are required to come before the Board.

TRANSACTION RECOVERY FUND COMMITTEE

Chris Maher, *Chairperson*

Committee Functions

- Monitor the activities and solvency of the TRF and report findings to the Board.
- Review staff reports and hearing officer recommendations concerning actions against the fund. Make recommendations to the Board on claims against the fund.

DEALER PRACTICES COMMITTEE

Ron Kody, *Chairperson*

Committee Functions

- To advise the Board and the Board staff on issues related to the conduct of business. The committee will receive and identify dealer practice issues. The committee will discuss, and as needed, direct a study or investigate issues in order to make policy and procedural recommendations to the Board.

- Review, and then make recommendations to the Board on dealer related issues proposed by the Executive Director or others who are required to come before the Board.

ADMINISTRATIVE HEARINGS

Board staff conducted 188 administrative hearings during the two-year reporting period. The Board's Operation's Manager prepared and presented the vast majority of the cases to a hearing officer. In other instances, the cases were presented by the Field Representative Supervisor. In all administrative hearings, any member of the Board's staff may be required to participate in the hearing process as a witness and expected to contribute their direct knowledge of the facts as they relate to the hearing. The Board offers licensed dealers and salespersons the opportunity to have an Informal fact-finding conference, and/or a Formal Hearing. The majority of Informal fact-finding conferences are convened when a licensed dealer or salesperson appeals an administrative action initiated by the Board staff. Other Informal fact-finding conferences are convened when the Executive Director feels that the dealership's actions warrants immediate attention are egregious and warrant actions more severe than a civil penalty. Formal Hearings are appeals of the actions taken against a licensed dealer or salesperson through the Informal fact-finding conference process levied against the dealer/salesperson by the Executive Director or the Board. During this reporting period, most of the Informal fact-finding conferences and Formal Hearings were conducted at the Board's headquarters location in Richmond. Approximately 13 of the administrative hearings were conducted virtually, between April 2020 and June 30, 2020, due to the COVID-19 pandemic. These virtual administrative hearings proved to be successful, economical, and efficient. Moving forward, the intent of the Board is to conduct future Informal Fact Finding Conferences and Formal Hearings virtually, unless the respondent requests an in-person hearing.

Included in the 188 administrative hearings previously mentioned are 32 hearings for consumers filing claims against the Motor Vehicle Transaction Recovery Fund (MVTRF). During this reporting period, the MVTRF paid out a total of \$176,383.65 to thirteen consumers. The MVTRF is funded through assessments paid by all licensed dealers during the first three years they are in business. Legislation initiated by the MVDB during the 2014 General Assembly session adjusted the fee that dealers pay into the MVTRF from \$250 to \$350 per year. This adjustment was the first in nearly 30 years and will ensure the MVTRF remains solvent and consumers protected.

As stated earlier, when it comes to enforcing the laws, regulations, and policies, the Board's philosophy is "education first". If educational efforts do not produce the desired outcomes, then we resort to our enforcement authority. The Board's primary enforcement tool is to assess civil penalties. In this reporting period, the MVDB assessed civil penalties totaling \$486,850 and collected \$382,075 from dealers. Collected civil penalties are deposited into the Commonwealth Transportation Fund. Civil penalties not collected are reported to the Department of Taxation's Debt Set-Off Program for collection. In cases involving Debt Set-Off, the dealer or salesperson is no longer licensed in Virginia.

Roughly, 15% of the total civil penalty assessments are appealed to an Informal Fact-Finding Conference and constitute the bulk of the 188 administrative hearings mentioned earlier. In some instances, assessed penalties are reduced or withdrawn by the Board based on evidence; new information presented by the respondent, or verified corrective actions in place by the dealer

that addresses the Board's concerns. The Board has the authority to increase or levy additional assessments, in addition to suspending and revoking licenses.

Hearing officers submit their reports/recommendations to the Board's Executive Director who reviews all of the recommendations. The Board has granted the Executive Director the authority to make decisions regarding certain cases related to Informal Fact-Finding Conferences. During this reporting period, the Executive Director agreed with the hearing officer's recommendation concerning 18 recommendations. 170 of the hearing officer's recommendations were forwarded to the Board to be decided during their scheduled meetings. The respondents of the hearings are encouraged to attend the Board meetings. The Board provides the respondent with an opportunity to state their case and respond to questions posed by Board members.

In advance of the Board meetings, Board members are provided with the hearing officer's recommendation, evidence presented during the fact-finding conferences, to include all comments/exceptions to the report as submitted by the respondent. Using the hearing officer's recommendation as the starting point, the Board discusses each case and makes their final determination in the interest of consumers and the motor vehicle dealer community.

CORE BUSINESS ACTIVITIES

DEALER LICENSING

The primary focus of the Board is to license franchise (new) and independent (used) automobile, motorcycle, trailer, and recreational vehicle dealers in the Commonwealth. During the reporting period, approximately 4,450 dealer licenses were issued to 3,700 licensed dealerships in Virginia. Many dealerships in Virginia possess multiple endorsements (licenses) which allow them to sell different types of vehicles, i.e., new cars/trucks, used cars/trucks, new trailers, used trailers, new motorcycles, used motorcycles, new recreational vehicles and used recreational vehicles. An independent dealership selling used cars/trucks, new trailers and used motorcycles is required to have three endorsements. The MVDB also issued approximately 320 dealer licenses during the period to Foreign Registrants², Manufactured Homes, Non-Profits and Water Craft dealerships.

Dealerships across the Commonwealth provide employment opportunities and economic opportunities for their communities. In Fiscal Year 2019 the MVDB staff processed 12,657 salespersons licenses. In Fiscal Year 2020 that number increased to 18,817. It should be noted that approximately 20% of all dealer licenses and 15% of all salespersons licenses are issued for a two-year period. Salesperson's licenses are tied to the employing dealership and are renewed when the dealership's licenses are renewed. A salesperson's license can be transferred to another dealership. Once transferred the license is renewed to reflect the expiration date of the gaining dealership's licenses. In FY19, approximately 7,540 salesperson tests were administered in the Commonwealth. In FY20, the figure dropped to 5,365 tests.³

² Motor vehicle dealers licensed in other states, but not in the Commonwealth, who sell motor vehicles at wholesale auctions.

³ COVID-19 temporarily shut down all salesperson and dealer operator testing in the Commonwealth between mid-March and mid-May 2020. On May 13, the Board started proctoring paper exams across the Commonwealth using agency Field Representatives. 334 salesperson and dealer-operator tests were proctored between May 13 and June 30. Limited salesperson and dealer-operator testing resumed at the DMV Customer Service Centers in late May.

A criminal history background check is conducted on all initial applications submitted to the Board for a dealer or salesperson's license. If the applicant has a criminal history, Board staff, using established criteria and guidelines, determines whether the applicant should be granted a license. Applicants denied a license have the option of appealing the denial.

Dealer-operators direct a dealership's day-to-day operations. Dealer-operators must possess a salesperson's license and are required to obtain a dealer-operator qualification. To achieve the dealer-operator qualification status, they must pass a standardized test. During the reporting period, approximately 1,168 dealer-operator exams were administered. Prior to COVID-19, all salesperson and dealer-operator testing was available at all DMV Customer Service Centers (DMV CSC).

DEALER EDUCATION

Legislation initiated by the Board and adopted by the 2005 General Assembly requires all applicants for an original independent dealer-operator certificate of qualification to successfully complete a course of study before they can take the certificate of qualification test. Working with the Virginia Independent Automobile Dealers Association (VIADA) and the Virginia Community College System (VCCS), a two-day class was instituted. The partnership between the VCCS and the VIADA ended in 2018. Currently the VIADA conducts all of the two-day in person dealer-operator classes. During the reporting period, forty-three classes were held, with over 1,102 students attending. Six of the aforementioned classes were conducted during the last three months of FY20 and limited to a maximum of 10 attendees per class due to social distancing guidelines and protective measures instituted per Governor Northam's directives in response to the COVID-19 pandemic and efforts to slow the spread of the virus. Many of those attending the two-day class did so voluntarily while others attended as mandated by the Board.

§46.2-1511 requires all dealer-operators to re-certify every three years. Re-certification is a form of continuing education. To recertify, dealer-operators have the choice of either completing an on-line course, a classroom course, or taking a test at any DMV CSC. During this report period, 1,950 dealer operators re-certified, an overwhelming majority of them by taking the on-line course.

During non-Board meeting months, the MVDB publishes the Dealer Talk newsletter. The focus of the newsletter is to educate dealers regarding common business problems; changes in laws and regulations; provide updates and reminders of existing law; recommended best practices; and to inform the dealer community of administrative actions taken by Board staff and the Board against licensed dealers. The newsletter is emailed to approximately 7,415 businesses/individuals and is posted on the agency's website.

Dealers and others may subscribe to our email list in order to receive periodic messages concerning items of interest. In addition, the agency's Education Coordinator works closely with the trade associations and the DMV to educate and inform the dealer community. In cooperation with each other, we share information, articles, and suggestions to publish in the Dealer Talk, via Send Pulse or through training videos. Lastly, the Board's Executive Director gives presentations at association meetings and annual conferences.

DEALER LICENSE PLATES

The Department of Motor Vehicles is responsible for allocating and distributing license plates, including dealer's license plates. In order to create a "one-stop shopping" experience for dealers, the Board and DMV maintain a Memorandum of Understanding that authorizes the Board to distribute dealer license plates. The following table displays the number of dealer plate transactions handled during the reporting period by Board staff:

FY 19	FY 20
44,519	43,957

CONSUMER ASSISTANCE

The MVDB employs two full-time employees whose primary responsibilities include responding to consumer concerns and initiating investigations on the consumer's behalf. A third employee, who also assists with licensing efforts, was added in FY19 with the reallocation of one of the agency's management positions. It is not the intent of, nor shall Board staff act as legal counsel to the consumer.

Consumers wishing to file a complaint, seeking mediation or assistance with a dealer matter can do so in several ways. By an overwhelming margin, calling the Board staff and talking to one of the consumer representatives is the most common method used by consumers. Other methods include submitting a consumer complaint form (via our website), emailing, sending letters/faxes, and in person visits at our Richmond location.

During this reporting period, the Board staff assisted with approximately 4,960 formal consumer assistance complaints⁴. Consumers sought assistance in securing titles, registering their vehicles, and warranty clarification. In many instances, the MVDB staff served as a mediator between the consumer and the dealership. Unfortunately, staff had to present consumers their legal options in many instances because the matter at hand was a civil matter or out of the preview of the MVDB. The most common questions and complaints received from consumers were related to:

- Title/Registration issues
- Out of business dealerships
- Contract/Pricing questions and disputes
- Vehicle service and repairs
- Vehicle warranties
- State inspections

On the agency's website (www.mvdb.virginia.gov), consumers can register a complaint against a dealer by completing the "Request for Consumer Assistance" form. Once completed and submitted by the consumer, Board staff will review the submission and respond accordingly. The MVDB has established a performance measure to ensure that all "Request for Consumer Assistance" requests are replied to in a timely fashion. This measure requires Board staff to

⁴ In previous Biennial reports, the total number of consumer complaint calls received was reported.

respond to 98% of all website submissions within three (3) business days. During this reporting period the Board met the established 98% threshold.

The Board has been aggressive in monitoring dealer advertising as well as other dealer practices. Although aggressive, the Board staff needs to find innovative methods and processes to monitor the exploding dealer advertisement market, which has grown via the internet and other social media platforms. During this period, the Board hired a resource to assist in the social media area. As we move forward, the Board staff is better positioned to deal with advertising via social media and has started addressing the issue. This is essential to maintaining a level playing field for all licensed dealers.

In the meantime the Board staff is expending its energies working with individual dealerships, and the dealer associations in educating the dealer community about Virginia's advertising laws and policies. This effort is in line with the Board's philosophy of "education first". To accomplish educating the dealers the Board staff continues to publish articles in the Dealer Talk newsletter, send emails, field visits, Constant Contact notifications, and violation letters.

Selected Agency Initiatives Instituted and Proposed

Training Videos (Instituted)

The Board's Education Coordinator, in conjunction with the Department of Motor Vehicles, developed and deployed three training videos during this reporting period. The videos, all dealing with advertising, are posted on the agency's website and available for downloading by the dealership community. The short videos, ranging between four minutes and thirty seconds in duration to eight minutes and 30 seconds, was created for the for the dealer community. The videos launched the agency's YouTube channel. Future training videos are planned.

Electronic Mail (Email) of §46.2-1547 (Insurance) Notifications (Instituted)

This process provides the agency with the ability to ensure dealers are carrying liability insurance on each dealer plate as required by Virginia law. Prior to implementation, many dealerships failed to carry liability insurance on each dealer plate issued to them by the MVDB. While a dealership may have carried insurance, many of them were underinsured when it came to the dealer plates. The process put in place by the MVDB staff requires the dealership to provide insurance documentation showing the number of dealer plates covered before the staff will issue the dealer plates. Agency Field Representatives will usually initiate this process when inspecting a dealership. If the dealership fails to show sufficient liability coverage on the dealer plates issued to them, an email is generated to the MVDB point of contact in Richmond to monitor the dealerships activity over the next 30 days regarding insurance. If the dealership complies, no actions are taken. If the dealer fails to comply, civil penalties are assessed based on the situation (underinsured or no insurance). Dealerships failing to have any liability insurance for their dealer plates will be assessed a civil penalty of \$600 per dealer plate and may face other administrative actions. Dealerships purposely reducing the number of dealer plates on their

liability insurance will be assessed a \$250 civil penalty per dealer plate and may face other administrative actions.

Activity Tracker (Instituted)

Initially implemented in April 2020 (response to COVID-19) as an electronic application to track and capture consumer complaint activity for MVDB staff working remotely, this tool has shown promise and capabilities to do more for the agency than originally intended. The information captured, historical information, is available for all to review and update when dealing with the customer. Field Representatives and other staff can use this tool when dealing with customers. Field Representatives can review this information before inspecting dealerships and use it to provide training to the dealership or as an area of further investigation. The agency will make an effort to tweak this application to maximize its potential.

Criminal Background Vendors (Proposed)

Criminal Background checks are required for new dealers and initial salesperson licenses. Currently, the MVDB staff, through ScreeningOne, handles all criminal background checks for the dealership community. During the first quarter of FY21, criminal background checks will be the responsibility of the hiring dealership. This move, an economical move for the MVDB, will streamline the licensing process and improve the turnaround times by five – ten days.

Dealer Portal (Proposed)

The dealer portal has been discussed by the Board for several years. Prior to COVID-19, the Board authorized the Executive Director to move towards purchasing a dealer portal. The onset of the COVID-19 pandemic magnified the importance of procuring a dealer portal. COVID-19 showed the Board that the dealer portal must be versatile and flexible enough to allow MVDB staff to work remotely and be able to carry out licensing functions. The MVDB staff, along with a Board sub-committee and DMV CIO, are working together to procure a dealer portal.

FISCAL AFFAIRS SUMMARY

In FY 96, through the APA process, the Board adjusted licensing fees that dealers paid to the Board. These fees cover all of the Board's expenses. When these fees were adjusted, it was done with a five year planning horizon. The plan was for the Board to collect sufficient yearly revenues to accumulate a fund balance that would meet operational needs throughout that five-year period.

Business processes implemented by the Board staff expanded the original five-year projection. This fee structure provided an adequate revenue base that supported the Board until the fees were adjusted in December of 2007. The Board successfully completed the APA Regulatory process in the fall of 2007 to adjust fees. The new fees were effective December 1, 2007 – nearly twelve years after the initial fees were put in place.

The 2007 fee structure was designed to produce balances in the first few years to support expenditures that would exceed revenues in future years. When the new fee structure was

developed, it was projected that the new fee structure would provide an adequate revenue stream through 2013.

Legislation adopted by the General Assembly in 2014 capped the fees that dealers could be charged, but more importantly this legislation gave the Board the authority to adjust fees not exceeding the cap. In July 2015, in concert with legislation that moved the oversight of motorcycles, trailers, and recreational vehicles from the DMV to the Board, the Board exercised its authority and adjusted dealer fees.

The Board's financial accounting and reporting functions are provided by the DMV. Because of this joint effort, the Board has been able to conduct its statutory responsibilities and its financial management functions in a most cost-effective manner. Increasing information technology expenditures, salaries/benefits, equipment, and vehicles, will require to the Board to look at the current fee structure to ensure adequate revenue is in place to support the agency and its mission going forward. The Board's operating revenue, expenditures/transfers and year-end balance for Fiscal Years 2019 and 2020 are shown below:

<i>Fiscal Year Ending June 30, 2019</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,785,694	2,605,742	1,677,821

<i>Fiscal Year Ending June 30, 2020</i>		
<i>Revenues</i>	<i>Expenses/Transfers</i>	<i>Cash Balance</i>
2,662,751	2,709,173	1,631,399